

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC d/b/a BRAZOS
LICENSING AND DEVELOPMENT,

Plaintiff,

v.

DELL TECHNOLOGIES INC., DELL INC.,
EMC CORPORATION, AND VMWARE,
INC.,

Defendants.

Case No. 6:20-cv-00480-ADA

Case No. 6:20-cv-00481-ADA

Case No. 6:20-cv-00485-ADA

Case No. 6:20-cv-00486-ADA

JURY TRIAL DEMANDED

**DEFENDANTS' PRELIMINARY IDENTIFICATION OF
CLAIM TERMS FOR CONSTRUCTION**

Pursuant to the Court's Scheduling Order,¹ Defendants Dell Technologies Inc., Dell Inc., EMC Corporation, and VMware, Inc. (collectively, "Defendants") hereby provide their Identification of Claim Terms with respect to the claims identified by Plaintiff WSOU Investments, LLC ("Plaintiff") on October 14, 2020 in its Preliminary Infringement Contentions served in each of the above captioned matters ("Infringement Contentions"). Defendants contend that these terms should be addressed by the Court as part of the claim constructions proceedings in the above captioned cases.

¹ No. 6:20-cv-480, D.I. 54; No. 6:20-cv-481, D.I. 54; No. 6:20-cv-485, D.I. 52; No. 6:20-cv 486, D.I. 52.

I. PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS**A. The Asserted Claims**

Plaintiff asserts the following patents, claims, and priority dates in its Infringement Contentions:

Asserted Patent	Asserted Claims	Asserted Priority Date
U.S. Patent No. 7,539,133 (“133 Patent”)	1–22	March 23, 2006
U.S. Patent No. 9,164,800 (“800 Patent”)	1–24	October 25, 2012
U.S. Patent No. 7,636,309 (“309 Patent”)	1–16	June 28, 2005
U.S. Patent No. 7,092,360 (“360 Patent”)	1–49	December 28, 2001

B. Preliminary Statement and Reservation of Rights

The inclusion of any claim terms, phrases, or clauses on this list is not intended, and should not be construed, to mean that any such terms, phrases, or clauses have a special or uncommon meaning. Moreover, the inclusion of a claim term, phrase, or clause below is not intended to and does not constitute an admission that the term, phrase, or clause is capable of construction and not indefinite or otherwise invalid under 35 U.S.C. § 112 or otherwise, and Defendants expressly reserve their right to contest the definiteness of any such terms, phrases, or clauses and the validity of any claim(s) of the Asserted Patents.

The below list is preliminary and Defendants reserve the right to modify, add to, or delete from the list based on, without limitation, any term or phrase, or any portion thereof, identified by Plaintiff as requiring construction by Plaintiff. Defendants further reserve the right to refine this list by combining or dividing identified terms, phrases, or clauses in an effort to resolve any dispute that may arise as to the proper disposition of the listed terms, phrases, or clauses. Defendants also reserve the right to include additional portions of claims to provide context and clarity for the

identified terms, phrases, or clauses. Furthermore, discovery is ongoing, and Defendants reserve the right to revise, amend, supplement and/or withdraw any of the term(s), phrase(s) or clause(s) provided herein should discovery yield additional information.

If Plaintiff modifies any assertion or contention in its Infringement Contentions, or presents any new assertion or contention relevant to this Identification of Claim Terms to the extent allowed by the Local Patent Rules or the Court, Defendants reserve the right to supplement or otherwise amend this Identification of Claim Terms. The Infringement Contentions are deficient in multiple respects and do not provide Defendants with sufficient information to understand the specific accused features and components and the alleged factual and evidentiary bases for Plaintiff's infringement allegations. Among other reasons, the Infringement Contentions lack the required specificity, fail to properly identify accused instrumentalities, and fail to explain adequately Plaintiff's infringement theories for numerous limitations. Plaintiff has prejudiced Defendants' ability to understand, for purposes of preparing this Identification of Claim Terms, what Plaintiff alleges to be the scope of the Asserted Claims.

II. IDENTIFICATION OF CLAIM TERMS

A. '133 Patent

Claim Term, Clause, or Phrase	Claim(s)
"determining, for each packet, whether a congestion condition exists [on/for] the egress node"	1, 12, and 13
"processing the packets"	1, 12, and 13
"such that packets associated with egress nodes for which the congestion condition does not exist have a different queuing priority within the load balancing network than packets associated with egress nodes for which the congestion condition exists"	1, 12, and 13
"means for determining an egress node associated with each of a plurality of packets of a traffic flow received at an ingress node adapted for splitting the traffic flow into a plurality of traffic flow portions independent of the egress"	12

node by which each packet is assigned to exit the load-balancing network”	
“means for determining, for each packet, whether a congestion condition exists on the egress node”	12
“means for processing the packets such that packets associated with egress nodes for which the congestion condition does not exist have a different queuing priority within the load-balancing network than packets associated with egress nodes for which the congestion condition exists”	12

B. '800 Patent

Claim Term, Clause, or Phrase	Claim(s)
“latency cost”	1 and 13
“[determining/determine] an assignment objective”	1 and 13
“assign[ing] [a] compute node[s] from the set of compute nodes to [a] data node[s] from the set of data nodes”	1 and 13
“data node”	1 and 13
“obtaining a set of compute cliques”	10 and 22

C. '309 Patent

Claim Term, Clause, or Phrase	Claim(s)
“split ratio vector”	1, 11, and 16
“combining [at least one of/ones of] the sub-flows of each of [at least two of] the plurality of traffic flows”	1, 11, and 16
“variance associated with at least one of the traffic flows”	4 and 13

D. '360 Patent

Claim Term, Clause, or Phrase	Claim(s)
“said element comprises: an element for recording whether a queue is empty or occupied, an element for recording the [number of data cells/quantity of data] contained in a queue, an element identifying a queue from which data is to be output, and an element identifying a group of queues from which data is to be output”	1 and 26

“expected state for said element”	1, 3, 12, 13, 18, 21, 24, 26, 28, 29, 36, 37, 39, 40, 41, 48, and 49
“predetermined state for said element”	
“expected value of said parameter”	
“expected states for that element”	
“expected status for said element”	
“expected state of said first element”	
“expected state for the or each further element”	
“expected value for the or each [further] parameter”	
“expected states for said parameter”	
“detection means for detecting a state of an element”	1 and 24
“comparing means for comparing the detected state with a predetermined state for said element and for outputting the result of the comparison”	1 and 24
“means for requesting said scheduler model to pass the status of said element to said monitor”	1
“monitoring means for monitoring a parameter relating to the operation of said scheduler”	3
“determining means for determining an expected state for said element based on said monitored parameter”	3
“prediction means for determining an expected status for said element”	12 and 13
“determining means for determining an expected value of said element”	18
“comparison means for comparing the detected parameter with said expected parameter and for outputting the result of the comparison”	18
“means for detecting the state of an element of said scheduler at a plurality of different times and comparing the detected states with expected states and outputting the result of said comparison”	21
“means for placing said test cells in said queues”	24
“means for detecting the state of at least one element of said scheduler whose state depends on which queue is selected by said scheduler for outputting a test cell”	24

“means for detecting from each test cell input to and/or output by said scheduler, the identity of the queue in which contained in said test cell”	24
“comparison means for at least one of: comparing the detected element status with an expected status for said element based on the detected queue identity and comparing the detected queue identity, with an expected queue identity based on the detected status of said element”	24
“element for recording whether a queue is empty or occupied” “an element for recording the [number of [data] cells/quantity of data] contained in a queue” “an element identifying a queue from which data is to be output” “an element [identifying/indicating] a group of queues from which data is to be output”	1, 5, 6, 7, 8, 9, 14, 15, 20, 25, 26, 30, 33, 34, 35, and 38

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By: /s/ Brian A. Rosenthal

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Certificate of Service

I hereby certify that on January 6, 2021, the foregoing document has been served by electronic mail on all counsel of record.

/s/ Russell Shapiro

Russell Shapiro